

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
BanJo Communications Group, Inc.)	File Nos. EB-02-BF-058
)	EB-02-BF-059
Licensee of Stations WCHN(AM), WBKT-FM,)	EB-02-BF-060
and WKXZ-FM)	NAL/Acct. No. 200232280001
)	FRN 0003-7815-98
Oneonta, New York)	

FORFEITURE ORDER

Adopted: December 20, 2002**Released: December 23, 2002**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to BanJo Communications Group, Inc. (“BanJo”), licensee of Stations WCHN(AM), WBKT-FM, and WKYZ-FM, Oneonta, New York, for willful and repeated violations of Sections 1.89(b) and 11.35(a) of the Commission’s Rules (“Rules”).¹ The noted violations involve BanJo’s failure to respond to Notices of Violation (“NOVs”), failure to maintain operational Emergency Alert System (“EAS”) equipment, and failure to determine and log the reasons why required monthly and weekly EAS tests were not received.²

2. On June 18, 2002, the Commission’s Buffalo, New York Resident Agent Office (“Buffalo Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to BanJo for a forfeiture in the amount of twenty three thousand dollars (\$23,000).³ BanJo filed a response to the NAL on August 12, 2002.

¹ 47 C.F.R. §§ 1.89(b) and 11.35(a).

² Although the NAL correctly noted that Section 11.35(a) of the Rules requires broadcast stations to determine the cause of any failure to receive required monthly and weekly EAS tests and to make appropriate entries in their EAS logs indicating the reasons why such tests were not received, the NAL incorrectly cited BanJo for violation of Section 11.61(a) of the Rules, 47 C.F.R. § 11.61(a), for its failure to determine and log the reasons why monthly and weekly EAS tests were not received. The incorrect rule cite has no impact on this case because the facts and circumstances make it clear that the rule that was violated was Section 11.35(a). However, we are taking this opportunity to correct the cite and will refer to this violation as a violation of Section 11.35(a) throughout the remainder of this *Order*.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232280001 (Enf. Bur., Buffalo Office, released June 18, 2002).

II. BACKGROUND

3. On March 14, 2002, an agent from the Buffalo Office inspected Stations WCHN(AM), WBKT-FM, and WKYZ-FM to verify the stations' compliance with the EAS requirements. The agent observed that the three stations were sharing a common control point and a single set of EAS equipment. Based on an examination of the EAS equipment and the stations' records, the agent determined that the three stations did not have an operational EAS system. The EAS equipment was out of paper, and no one at the stations was able to locate or install a new roll of paper. In addition, there were no EAS logs and the stations had no record of receiving or transmitting weekly or monthly EAS tests for at least two years. Further, no one at the stations was able to tell the agent the last time an EAS test was received or transmitted.

4. On March 25, 2002, the Buffalo Office issued three separate NOVs citing BanJo for violations observed during the inspection of Stations WCHN(AM), WBKT-FM, and WKYZ-FM. The NOVs cited BanJo for failure to maintain operational EAS equipment and failure to determine and log the reasons why required monthly and weekly EAS tests were not received. BanJo did not respond to the NOVs. On April 30, 2002, the Buffalo Office contacted BanJo's president to ask why BanJo had not responded to the NOVs. BanJo's president stated that the responses would be in the mail within the next two days. However, the Buffalo Office did not receive responses to the NOVs from BanJo until after issuance of the *NAL*.

5. On June 18, 2002, the Buffalo Office issued an *NAL* finding BanJo apparently liable for a forfeiture in the amount of \$23,000 for failure to respond to the three NOVs in willful and repeated violation of Section 1.89(b) of the Rules, failure to maintain operational EAS equipment in willful and repeated violation of Section 11.35(a) of the Rules, and failure to determine and log the reasons why EAS monthly and weekly tests were not received in willful and repeated violation of Section 11.35(a) of the Rules. The *NAL* noted that the base forfeiture amount for failure to maintain operational EAS equipment is \$8,000, the base forfeiture amount for failure to respond to Commission communications is \$4,000, and the base forfeiture amount for failure to maintain required records is \$1,000. Since each of the three stations failed to respond to the NOV and failed to maintain the required EAS logs, the *NAL* proposed a total forfeiture of \$12,000 for failure to respond to the three NOVs and a total forfeiture of \$3,000 for failure to maintain EAS logs.

6. In its response to the *NAL*, BanJo states that it fully accepts the responsibility and associated liability for the EAS violations. However, BanJo requests cancellation of the forfeiture proposed for failure to respond to the NOVs. In this regard, BanJo states that it had its contract engineer prepare responses to the NOVs, but these responses were never sent to the Buffalo Office due to a miscommunication between BanJo's president and the contract engineer. In addition, BanJo provides a letter from the contract engineer, who states that he prepared and e-mailed the responses to BanJo's president and assumed that BanJo's president was going to submit the responses, but that BanJo's president assumed that the contract engineer was going to submit the responses. The contract engineer also provides copies of the responses to the NOVs which he prepared and asserts that the dates on these responses demonstrate the timeliness of the responses. Finally, BanJo notes that this is the first and only time it has been found to be in violation of the Commission's rules.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining BanJo’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

8. Section 1.89(b) of the Rules requires that a response to an NOV be submitted to the office originating the NOV within 10 days, or such period as may be specified in the NOV. Each of the three NOVs issued to BanJo by the Buffalo Office on March 25, 2002 stated that a response was required within 10 days. Thus, the responses were required to be received at the Buffalo Office by April 4, 2002. BanJo did not submit responses to the three NOVs until after the *NAL* was issued on June 18, 2002. BanJo states that the failure to submit the responses to the NOVs was the result of a miscommunication between its president and its contract engineer. In addition, BanJo’s contract engineer states that the dates on the responses demonstrate the timeliness of the responses. However, under the Commission’s rules, it is the date that a document is received by the Commission, not the date on the face of the document, that determines whether the document is timely.⁷ In any event, we note that the responses are dated May 9, 2002. Therefore, even assuming that there was a miscommunication between BanJo’s president and its contract engineer as to who was going to submit the NOV responses, it appears that the responses were not prepared until May 9, 2002, more than a month after they were due and ten days after BanJo’s president told the Buffalo Office that the responses would be in the mail within two days. Accordingly, we conclude that BanJo willfully⁸ and repeatedly⁹ violated Section 1.89(b) by failing to respond to the NOVs. Nevertheless, we note that the three NOVs addressed the same violations with respect to a single set of EAS equipment shared by the three stations. Under the circumstances, we think that it is appropriate to reduce the forfeiture amount for the three violations of Section 1.89(b) from \$12,000 to \$4,000, the base forfeiture amount for a single violation of Section 1.89(b).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See 47 C.F.R. § 1.7 (stating, in relevant part, that “pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”)

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

9. Section 11.35(a) of the Rules requires broadcast stations to install and maintain operational EAS equipment so that monitoring and transmitting functions are available during the times when the station is in operation. Section 11.35(a) also requires broadcast stations to determine the cause of any failure to receive required monthly and weekly EAS tests and to make appropriate entries in their EAS logs indicating the reasons why such tests were not received. BanJo states that it fully accepts the responsibility and associated liability for the EAS violations. Accordingly, we conclude that BanJo willfully and repeatedly violated Section 11.35(a) of the Rules.

10. As noted above, we have reduced the forfeiture amount for BanJo's violations of Section 1.89(b) from \$12,000 to \$4,000, resulting in a reduction of the total forfeiture amount for BanJo's violations of Section 1.89(b) and 11.35(a) from \$23,000 to \$15,000. BanJo notes that this is the first and only time it has been found to be in violation of the Commission's rules. After reviewing Commission records, we conclude that a further downward adjustment of the forfeiture amount based on BanJo's past history of compliance is warranted. We accordingly reduce the total forfeiture amount for BanJo's violations of Sections 1.89(b) and 11.35(a) from \$15,000 to \$12,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ BanJo Communications Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for willful and repeated violations of Sections 1.89(b) and 11.35(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232280001 and FRN 0003-7815-98. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to James Vincent Johnson, President, BanJo Communications Group, Inc., 34 Chestnut Street, Oneonta, New York 13820.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.